REMARKS

Claims 12, 23, 25, 27, 29, and 31 are currently pending in this application. Claims 1-11, 13-22, 24, 26, 38, and 30 are previously cancelled claims. Applicants have amended claims 12, 23, and 25 to correct dependency issues and remove the terms "high", "low," and "substantially". Support for these amendments are found in paragraphs 0034, 0036, and 0037 of US Patent Application Publication 2004/0076591. Applicants request that these amendments be entered to put these claims in better form for allowance. Moreover, these amendments do not bring up new issues.

REJECTION UNDER 35 U.S.C. § 112, second paragraph

The Examiner has rejected claims 12, 23, 25, 27, 29, and 31 under U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Examiner's Position:

According to the Examiner, in claims 12 and 25 the terms "high" alcohol/surfactant levels, "low" temperature stable, and "substantially" clear/free of impurities are relative terms, which are inadequately defined by the specification to serve as definite limitations. The Examiner also states that in claims 12 and 25 the various percentage values recited therein are unclear in meaning because they do not include a basis for the measurement. The Examiner also states that claim 23 depends from a cancelled claim and that text is inadvertently missing from claim 25.

Applicants' Position:

Applicants have removed the terms "high", "low", and "substantially" from claims 12 and 25. Additionally, Applicants have added a basis of measurement for the various percentage values recited in claims 12 and 25. Furthermore, claim 23, as amended, depends from claim 12 and Applicants have inserted inadvertently omitted text into claim 25. Support for these amendments are found in paragraphs 0034, 0036, and 0037 of US Patent Application Publication 2004/0076591.

Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw this rejection.

REJECTION UNDER 35 U.S.C § 102(e)

The Examiner has rejected claims 12, 23, 25, 27, 29, and 31 under U.S.C. § 102 (e) as being anticipated by US Patent No. 5,626,837 (Shimada).

Examiner's Position:

According to the Examiner, the same cyclodextrins are being used in substantially the same percentages by Shimada as by Applicant, and that Shimada cyclodextrins will inherently be "capable of solubilizing" triclosan without the use of high alcohol levels, high surfactant levels, or other phenolic cosolvents.

Applicants' Position:

Applicants respectfully traverse this rejection. Shimada teaches an oral composition comprising a cationic bacteriocide and a water-soluble flavor and refers to the blending of the cationic bacteriocide with cyclodextrin. In contrast, the present invention, as amended, teaches a phenolic selected from the group consisting of a combination of menthol, eucalyptol, methyl salicylate, and thymol. Nowhere does Shimada teach or suggest a phenolic selected from the group consisting of a combination of menthol, eucalyptol, methyl salicylate, and thymol.

"When a claimed invention is not identically disclosed in a reference...then the reference does not anticipate." Mendenhall v. Astec Industries, Inc., 12USPQ2d 1956 (Fed. Cir. 1989).

Therefore, the compositions of the present invention, as amended, are not anticipated by this reference. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection under 35 U.S.C. § 102 (e) and pass this application to allowance.

DOUBLE PATENTING REJECTION

Claims 12, 23, 25, 27, 29, and 31 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,245,321. Responsive to this rejection, applicants submit herewith a Terminal Disclaimer that

disclaims the terminal part of the statutory term of any patent granted on the above-captioned application, which would extend beyond the expiration date of the full statutory term of US Patent No. 6,245,321. This should obviate the Examiner's obviousness-type double patenting rejection.

If the Examiner believes a telephone conference would expedite prosecution, the Examiner is invited to contact Erika Singleton Wilson, Reg. No. 52,368, at (973) 385-5564.

Respectfully submitted,

Date: 1/12/2005

Erika Singleton Wilson
Attorney for Applicants
Reg. No. 52,368
Tel. No. (973) 385-5564

Warner-Lambert Company LLC
201 Tabor Road
Morris Plains, New Jersey 07950